

UNITED STATES DEPARTMENT OF COMMERCE Patent and Trademark Offic

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APPLICATION NO. FILING DATE FIRST NAMED INVENTOR ATTORNEY DOCKET NO. 97465,402 12/17/99 PUNAKALA 5 2047.114

.005514 IM52/0327 FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK NY 10112 EXAMINER
WONG, L

PAPER NUMBER
1761

DATE MAILED: 03/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/465,402 Applicarit(s)

Ponakala et al.

Examiner

Leslie Wong

Group Art Unit 1761

Responsive to communication(s) filed on	
☐ This action is FINAL.	
Since this application is in condition for allowance except for for in accordance with the practice under Ex parte Quayle, 1935 C.	
A shortened statutory period for response to this action is set to exis longer, from the mailing date of this communication. Failure to rapplication to become abandoned. (35 U.S.C. § 133). Extensions 37 CFR 1.136(a).	espond within the period for response will cause the
Disposition of Claims	
	is/are pending in the application.
Of the above, claim(s)	is/are withdrawn from consideration.
Claim(s)	is/are allowed.
	is/are rejected.
☐ Claim(s)	
☐ Claims	
Application Papers ☐ See the attached Notice of Draftsperson's Patent Drawing Re	eview, PTO-948.
☐ The drawing(s) filed on is/are objected	
☐ The proposed drawing correction, filed on	
☐ The specification is objected to by the Examiner.	
$\hfill\Box$ The oath or declaration is objected to by the Examiner.	
Priority under 35 U.S.C. § 119 Acknowledgement is made of a claim for foreign priority under All Some* None of the CERTIFIED copies of the received.	
received in Application No. (Series Code/Serial Numbe	r)
\square received in this national stage application from the Inte	ernational Bureau (PCT Rule 17.2(a)).
*Certified copies not received: Acknowledgement is made of a claim for domestic priority u	ndor 25 U.S.C. & 110(a)
•	nuel 33 0.3.c. 3 113(e).
Attachment(s) ☑ Notice of References Cited, PTO-892	
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s)	
☐ Interview Summary, PTO-413	-
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948	
☐ Notice of Informal Patent Application, PTO-152	
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SEE OFFICE ACTION ON THE	FOLLOWING PAGES

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nofre et al (5480668).

Nofre et al disclose N-substituted derivatives of aspartame and that N-[N-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine 1-methyl ester is an extremely potent sweetening agent, where the agent may be used by itself or in combination with other sweetening agents (see entire patent, especially column 6, lines 16-26). Nofre et al also disclose that the agent may be used in a variety of products (see column 1, lines 10-14).

The claims differ as to the amounts employed and the specific use in chewing gums.

In the absence of a showing to the contrary, the amounts employed are seen to be no more that optimization which is well-within the skill of the art, see In re Boesch 205 USPQ 215.

The use of intense sweeteners in chewing gum products is notoriously well-known and the selection of chewing gum product is well-within the skill of the art and merely a matter of choice.

Once the art has recognized the use of N-[N-(3,3-dimethylbutyl)-L-\alpha-aspartyl]-L-phenylalanine 1-methyl ester as a sweetening agent, then the use and manipulation of amounts for use in chewing gums would be no more than obvious and well-within the skill of the ordinary worker.

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It would have been obvious to a person of ordinary skill in the art, at the time the

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invention was made, to use the sweeteners of Nofre et al in chewing gum products because it is

well-known in the art that N- $[N-(3,3-dimethylbutyl)-L-\alpha-aspartyl]-L-phenylalanine 1-methyl ester$

is a powerful sweetening agent for use in foods and beverages.

In the absence of unexpected results, it is not seen how the claimed invention differs from

the teachings of the prior art. Applicant's claims are drawn to a combination of known

components which produces expected results, see In re Kerkhoven 205 USPQ 1069 and In re

Gershon 152 USPQ 602.

All of the claim limitations have been considered. None of them are seen as serving as

basis for patentability. No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Leslie Wong whose telephone number is (703) 308-1979. The examiner can

normally be reached on Tuesday-Friday from 6:30 AM to 3:00 PM.

The fax number for this Group is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application should be

directed to the Group receptionist whose telephone number is (703) 308-0661.

Leslie Wong

Primary Examiner

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LAW

March 21, 2001